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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/334,891      | 06/17/1999  | GUIDO GHISOLFI       | 32461/GM/IP         | 5842             |

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12/23/2002

MODIANO & ASSOCIATI  
VIA MERAVIGLI 16  
MILANO, 20123  
ITALY

EXAMINER

PATTERSON, MARC A

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 12/23/2002

17

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/334,891

Applicant(s)

GHISOLFI, GUIDO

Examiner

Marc A Patterson

Art Unit

1772

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 December 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1-5 and 7-22.

Claim(s) withdrawn from consideration: none.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: see attached.

**ADVISORY ACTION**

*Applicant's arguments filed December 9, 2002 have been fully considered but have not been found to be persuasive.*

1. Applicant argues, on page 4 of Paper No. 16, that amended Claim 1 overcomes the prior art of record. However, the claim prior to amendment did not contain the limitation 'beverage leakage free – containers' or the limitation 'the folding along the lines of the creased pattern occurring without breakage.' The amendment therefore raises a new issue, which to be addressed would require further search and consideration, and the amendment will therefore not be entered. Even if the amendment were to be entered, the amended claim would not overcome the prior art of record, because the limitation 'beverage leakage free – containers' and the limitation 'the folding along the lines of the creased pattern occurring without breakage' are indefinite. The limitation 'the folding along the lines of the creased pattern occurring without breakage' also appears to be directed to a method limitation, which is given little patentable weight.

Applicant also argues, on page 5, that no motivation has been cited to combine the teachings in the prior art of record. However, as stated on page 2 of the previous Action, it would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for foamed polyethylene terephthalate rather than paperboard in Martin, Jr. in order to make a container which provides improved shelf life to fruit juices as taught by Joosten and to have provided for a polyester resin foamed sheet having a density of less than  $700 \text{ kg m}^3$  in Martin Jr. in order to maintain good heat insulating properties as taught by Hayashi.

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***Conclusion***

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (703) 305-3537. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (703) 308-4251. FAX communications should be sent to (703) 872-9310. FAXs received after 4 P.M. will not be processed until the following business day.

Marc A. Patterson, PhD.

*Marc Patterson*  
Art Unit 1772

*[Signature]*  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772 12/19/02